

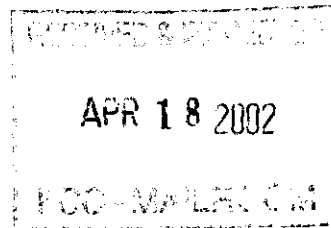
Maryland State Department of
EDUCATION

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Schools for Success

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April 2, 2002

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW., Suite TW-A325
Washington, D.C. 20554

RE: Schools and Libraries Universal Service Support Mechanism – CC Docket No. 02-6

Dear Mr. Caton:


Thank you for considering comments from the Maryland State Department of Education on the Notice of Proposed Rulemaking for the Schools and Libraries Universal Service Support Mechanism (E-rate Program). The E-rate program has been very beneficial to Maryland schools and libraries in providing significant discounts on telecommunications services, Internet access, and related technologies.

Maryland schools and libraries have participated in the program since its inception. Our staff has been actively involved in helping schools and libraries and the business community to better understand the intent and the process for participation in the E-rate program.

The enclosed comments represent a collaboration among the Maryland education and library community who are directly involved in coordinating the E-rate application process. Also the collaboration of the Council of Chief State School Officers group has been helpful in drafting these comments. We hope that these comments will be helpful in your deliberations to provide a more efficient and equitable program.

The Federal Communications Commission is to be applauded for its efforts in continuous improvement of the E-rate program.

Sincerely,


Nancy S. Grasmick
State Superintendent of Schools

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**Before the Federal Communications Commission
Washington, DC**

**In the matter of:
Schools and Libraries Universal
Service Support Mechanism**

CC Docket No. 02-6

**COMMENTS SUBMITTED BY THE
MARYLAND STATE DEPARTMENT OF EDUCATION
IN RESPONSE TO THE
RELEASED JANUARY 25, 2002
NOTICE OF PROPOSED RULEMAKING & ORDER**

A. Application Process

- a. What changes to the eligible services process should the Commission implement that relate to the application processes and will serve to improve program operation and oversight of the program?**

Schools and libraries in Maryland would benefit from a flexible approach to acquiring services while maintaining a process that ensures fair competition among providers. Registration for vendors, equipment, and services is a problem. For example, SLD staff cannot differentiate a router used for wide area networking to access the Internet, which is discountable, from a remote access router, which is not discountable. How will staff be able to identify and catalog new equipment, which changes rapidly? How will staff be able to cope with mergers, name changes and technology shifts?

Redesign the policy for discounts under multi-year contracts that minimize SLD bidding process.

- b. Should the FCC require a computer list of eligible services that is accessible online? If so, what is the feasibility of such a system? How often should it be updated and how can interested parties provide input on an on-going basis?**

Yes, Maryland schools and libraries favor a listing that identifies eligible services a helpful resource in determining appropriate discountable services. Reduce the time required for approval notification from USAC. Improve application processing efficiency by providing data required on multiple forms to be keyed in once then automatically entered in appropriate areas on the forms. Develop an online acknowledgement process for receipt of forms by USAC.

The list would require a dynamic management process to assure applicants have opportunities to acquire the services that best meet their needs and to share new service offerings that become available. Use the SLD website to post the listing. A searchable list could be grouped according to general eligible service categories. E-mail exchanges from applicants to the administrator in a specific list service area could provide information on new services to be considered for inclusion.

The list should be updated monthly and interested parties could request information using email to a designated website contact.

c. Should the Commission reconsider or modify the current selection of products and services eligible for support in the E-rate program?

Provide for the acquisition and maintenance of content filtering hardware and software on the eligible services list.

d. In particular, should the Commission improve the selection mechanism by changes in its current eligibility policies regarding (a) Wide Area Networks, (b) wireless services, and (c) voice mail?

Yes. The commission should improve the selection mechanism by changing its current eligibility policies to expand the eligible services and priority-funding areas available for schools and libraries to build modern, efficient telecommunication infrastructures by including provisions for wan, wireless and voice mail services. Expand the list of eligible services to include wireless technology.

The acquisition of WAN equipment should be in a higher priority, and limit the number of times an applicant can "come to the well" for equipment to once every two or three years. The leasing of WAN equipment should be reduced to the same priority, which gives everyone, whether leasing or buying, an equal opportunity to acquire equipment. With the existing funding cap and the number of applications submitted, the possibility exists that an applicant will not get any equipment.

For wireless phones, discounts for the personnel directly involved in support of eligible services should be considered. Discounts for voice mail services should be eligible as a telecommunications service.

2. Should the Commission allow for Internet Access when bundled with content subject to rules requiring consideration of cost, reliability and other factors where price is the primary factor?

Yes. The Commission's policy for Internet access is designed to provide efficient, reliable and cost effective access for schools and libraries. These objectives are accomplished by the current categorization of priority one and priority two services. If the Internet with content provider is less than the Internet only provider or the applicant can document a quantifiable technical difference, then SLD should allow

the cost of the Internet with content provider. Applicants should be able to purchase the best bandwidth for their dollar.

3. Should the Commission change the current application review policy of utilizing a 30 % benchmark when reviewing funding requests that include both eligible and ineligible services?

No. Schools and libraries are experiencing difficulty in determining discountable services due to the complexity of services available and the rapid rate of change in the telecommunications industry. The 30% benchmark policy improves program efficiency in the process of application review.

The applicant should be responsible for identifying costs and the categories under which they should apply. If a dispute results from an interpretation of eligibility, e.g. the equipment is not covered under the rules, then the 30% rule should apply. If the applicant can not supply an explanation of costs and the categories, then the application should be denied.

4. Should the Commission incorporate provisions to require compliance with statutory requirements of the Americans with Disabilities Act (ADA) as a condition of receipt of universal service discounts?

Yes. Maryland schools and libraries support the efforts of the Commission to seek compliance with ADA requirements. The enforcement of ADA compliance for the E-rate program would be very complex. It is difficult to determine how ADA certification would apply to any network, which only applies for telecommunications funds. For any requirement imposed by SLD there should be allowable services, as a priority one for discounts. Currently only servers are available for eligibility under current rules. The cost of compliance should be addressed in the eligibility list.

5. Should the Commission modify its rules regarding consortia to increase consistency or fairness to them in the program? Should it clarify that only ineligible members cannot receive below tariff rates?

Yes. We agree with the Commission's Proposed Rule change as it relates to other eligible entities; however, we submit that the proposed list of consortia-eligible non-profit entities is by no means comprehensive. In short, as we believe the Commission intends, the Proposed Rule should accurately describe who is eligible to receive interstate services at tariffed or below tariffed rates based on Federal regulation, but should clearly refrain from determining who is eligible to participate in consortia for purposes of intra-state, non-tariffed or other competitive services that are based on state or local rules and regulations

1a. Should the Commission specify that service providers must offer applicants the option of discount or completing a Billed Entity Applicant Reimbursement (BEAR) Form?

Yes. Maryland schools and libraries would find specification that service providers to offer applicants options for direct discounts or the BEAR form. Schools and libraries express concerns for the accounting process with vendor transactions and the resulting late payments due to processing of BEAR forms, even when the applicant has confirmed that the service provider has received the check from the Administrator.

1b. Should the Commission incorporate enforcement measures for BEAR remittals after 20 days?

Yes. Maryland schools and libraries support enforcement measures for late BEAR payments which would enhance the integrity of the program by eliminating or reducing delayed payments which have a serious impact on school and library programs and budgets.

The SLD should put in place an enforcement mechanism for non-payment past ten days. If the vendor does not want to be subject to penalties, then the vendor should supply the discounts on their invoice. The SLD should also require vendors to provide discounted bills if requested by the applicant. This would greatly reduce the applicant's support costs.

Three improvement strategies include (1) developing a payment process that provides direct payment from the SLD to vendors; (2) developing a more efficient process for assigning spin numbers for vendors that have not participated in the e-rate program; (3) providing a list of spin numbers to identify vendor contacts.

2. Should the FCC establish rules prohibiting or limiting transfer of equipment to other eligible entities for three years?

No. Prohibiting or limiting transfer of equipment to other eligible entities for three years could result in state and local procurement policies. This does not appear to be workable. What happens if an applicant's local jurisdiction negotiates a telecom upgrade that requires new equipment? What happens if a wired school is closed, and taken over by a non-eligible entity.

How does the SLD determine that an applicant has received 100% of equipment for eligible connections for a site? Suppose the applicant can only acquire a router one year, then a server the next? Is the applicant forced to wait two to three years until the cycle is over, and the original equipment becomes obsolete?

3. Should the Commission allow ineligible entities use of excess services in remote areas?

Yes. Sharing the excess capacity of eligible services at cost that are not being used during school hours should be allowed. Resource sharing should accommodate school and community learning opportunities.

What criteria would be used to determine where excess services could be used? How would this be enforced?

B. Appeals

Should the Commission extend appeals to 60 days and deem an appeal files on the date it is postmarked instead of the date it is received?

Yes, the extension of the appeal process would benefit applicants who have to investigate claims, collect data, and provide an appropriate response. In addition, applicants would have additional time to obtain the necessary information to participate in the appeals process. The postmark provides documentation of the applicant's intent to establish a legitimate appeal.

1. How should the Commission fund successful appeals?

Applicants should not be penalized for errors that results from SLD program staff. Annual set aside funding for appeals with options to carry over prior appeal funding. Therefore, it is important for successful appeals to be funded immediately. Funds should be set aside for pending appeals during the funding year. Should successful appeal demand exceed the supply of set-aside funds, carryover funds from previous years should fund appeals.

Applicants should not be penalized for mistakes made by the SLD. Priority one projects should be funded prior to priority two projects. Successful applications should be fully funded. There should be someone available to talk to when an application is denied. A process for feedback/discussion should be available for those applications denied by the program.

A. Enforcement Tools

1. Independent Audits

Maryland schools and libraries are opposed to independent audits. The SLD can impose costs onto applicants by requiring independent audits. For example, would the cost of hiring a CPA with specialization in SLD audits be at the applicant's expense? The burden on schools and libraries to assume the expenses of internal audits could be significant. With current proposed policies and data collection strategies, the SLD's audit functions could be improved.

2. Prohibitions on Participation

The state E-rate coordinators have often expressed their dismay regarding the activities of unscrupulous applicants and service providers and welcome additional rules that would give the Commission more authority to sanction those that willfully and repeatedly fail to comply with statutory and regulatory requirements. However, this process may continue to be long and cumbersome as the Commission attempts to verify the abuse and defend its decision.

However, the Commission may want to consider establishing on the Administrator's website a section similar to that of the Better Business Bureau and the Federal Aviation Administration that allows the public to view comments that have been filed with the agency. This may provide a faster way to address some of the issues that have been occurring, reduce the administrative burden on the Administrator and the Commission and allow applicants and service providers who are playing by the rules to make their own decisions about potential collaborators and consultants long before the Commission can reasonably act.

B. Unused Funds

1. General Overview

Since this is a capped program, funds should be moved to the "next in line" applicant for the funding year. This approach would also relieve some of the pressure to cap priority one funding. Funding commitments could be made prior to the end of the funding year and would minimize the amount of unused funds.

Strategies to reduce unused funds include: (1) complete funding commitments before funding year begins; (2) extend non-recurring cost commitments for 18 months; and (3) provide better access to program data:

2. Reduction of Unused Funds

Maryland schools and libraries have experienced difficulty in the coordination of E-rate applications with their local and state budget process and the estimation of service costs. First, under-utilization results from the scheduling of application windows that are not aligned with school district and state budgeting processes. Second, usage-sensitive long distance and Internet services must be estimated since usage varies month to month. Third, since E-rate funds are allocated after the start of the program-funding year, E-rate funds tend to be disregarded as a reliable funding source. Fourth, because E-rate funding commitments have traditionally occurred after the program-funding year has begun, many projects are delayed due to lack of funds.

3. Treatment of Unused Funds

Unused funds should be returned to the Universal Service Fund to support applicant requests for the current funding year or applied to the funding base for the next funding year.

IV. Conclusion

Maryland schools and libraries continue to benefit from the E-rate program. We applaud the efforts of the Commission to improve the performance and accountability of the program to accomplish its goal of increasing telecommunications services and Internet access in schools and libraries.